

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**RE: COMPETITIVE MARKET INITIATIVES**

**DTE 01-54**

**Reply Comments of the Massachusetts Union of Public Housing Tenants  
and  
National Consumer Law Center  
August 17, 2001**

The National Consumer Law Center ("NCLC"), on behalf of the Massachusetts Union of Public Housing Tenants ("MUPHT"), offers these reply comments in DTE 01-54, the Department's investigation into competitive market issues. Under previous procedural rulings, parties were directed to file their initial comments by August 10, 2001 and serve those comments electronically on all parties on the established service list. August 17, 2001 was set as the date for reply comments.

On or before August 10, 2001, MUPHT received comments filed by several parties, including: the Office of the Attorney General ("AG"); Division of Energy Resources ("DOER"); NSTAR Electric ("NSTAR"); Massachusetts Electric Company/Nantucket Electric Company ("MECo"); Western Massachusetts Electric Company ("WMECo"); Select Energy ("Select"); a coalition of Competitive Suppliers ("Suppliers"); and ChooseEnergy ("Choose").<sup>1</sup> MUPHT hereby offers brief reply comments.

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<sup>1</sup> Other parties filed electronically and their comments are available on the Department's web site. At least one party, Dominion Retail, Inc., appears to have filed a paper copy of comments but not an electronic version. Dominion's comments are listed on the Department's electronic docket but are not posted electronically.

**I. INFORMATION THAT WOULD IDENTIFY CUSTOMERS AS LOW-INCOME SHOULD NOT BE RELEASED**

MUPHT in its initial comments urged the Department to be extremely sensitive to the risk that competitive suppliers would redline low-income customers, if they were able to learn which customers were on the low-income rates. MUPHT Comments, at 17. The comments filed by the Suppliers bear out MUPHT's concerns. In the very section in which the Suppliers explain why they do not seek "customer payment information," they recommend that "the lists of residential default service customers provided by the utilities [should] include only customers that are not more than thirty days in arrears." Suppliers Comments, at 13. The Suppliers' intent is obvious: they do not wish to market to customers who are more than thirty days in arrears, even if those customers can afford to pay their bills but are slow in doing so. Were these Suppliers to obtain information that customers were low-income and, therefore, possibly unable to pay at times, the Suppliers would no doubt take even greater pains to avoid doing business with them. It is essential that the Suppliers not know which customers are on the low-income rates.

Of those parties that addressed this issue, all agree that distribution companies should only identify customers as being on a residential rate, but should not release any information that would reveal any customer's income level. See, for example, AG Comments, at 2, n. 2; NSTAR Comments, at 4, n. 2. No party seeks release of this information, and the Department should explicitly order that this information must be maintained confidentially.

MUPHT remains concerned that distribution companies have already released identifying

information about residential customers in response to the Department's June 29 order.<sup>2</sup> However, it is not clear from the transcript of the July 24 Technical Session or the comments filed on August 10 how many residential customers may have been affected or the exact nature of the information released.

MUPHT reserves its right to offer further comments should it become clear that information was released that identified residential customers as low income.

## **II. THE DEPARTMENT SHOULD ADOPT CLEAR RULES REGARDING ELECTRONIC SIGNATURES IN ORDER TO PROTECT CONSUMERS**

Several parties urge the Department to authorize the use of electronic signatures (see, for example, DOER Comments, at 16) and conclude that there is no bar to the use of electronic signatures and authorizations for release of information (see, for example, Suppliers Comments, at 20).<sup>3</sup>

MUPHT itself commented that federal law authorizes the use of electronic signatures

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<sup>2</sup> MUPHT is also concerned that the Department, distribution companies and Suppliers have too easily concluded that a customer's name, address and rate class are not private information and can be released without customer consent. The Department concludes, without citation, that "this type of customer information is widely available to telephone local exchange carriers in the Commonwealth." While local exchange carriers ("LECs") have extensive identifying information about their own customers, MUPHT believes that LECs are only required to turn over name, address and phone number to other parties "for the purpose of publishing directories." 47 USC §222(e). MUPHT is not aware of any statute that requires LECs to turn this information over to competitive telephone carriers, comparable to the Department's requirement that distribution companies disclose name, address and rate class to competitive suppliers. MUPHT also understands that LECs do not turn over information disclosing that a customer gets a low-income discount. MUPHT reiterates that distribution companies have promised their customers that identifying information will remain confidential. MUPHT initial Comments, at 16.

<sup>3</sup> The distribution companies take a neutral or ambiguous stance on whether electronic signatures may be used in Massachusetts, in light of the requirement for written signatures in the Restructuring Act. WMECo Comments, at 16-17; NSTAR Comments, at 15, n.11; MECo Comments, at 6.

(Comments, at 5). But MUPHT also emphasized the many conditions and requirements suppliers must meet if they intend to conduct business electronically. Consumers will face serious risks if the Department does not closely regulate supplier practices. *Id.*, at 6 - 13.<sup>4</sup> MUPHT again underscores the importance of the Department adopting clear and rigorous rules on such issues as insuring that customers are not forced to conduct business electronically and requiring suppliers to obtain a clear demonstration from customers that they consent to and are capable of conducting business electronically. It appears that the Department in fact intends to address these implementation issues if it concludes that electronic signatures may be used in Massachusetts.

### **III. CONCLUSION**

The Department should explicitly prohibit the release of any information that would identify residential customers as low-income and should take remedial actions if such information has already been released.<sup>5</sup> The Department should conduct further proceedings to determine how suppliers may be able to conduct their business electronically.

MUPHT appreciates this opportunity to offer its comments.

Respectfully submitted,

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<sup>4</sup> The AG offered similar comments.

<sup>5</sup> As noted above, it is not clear the extent to which any such information has been released in response to the Department's June 29 order.

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